IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

MFA.No. 159 of 2000(D)

O.A. NOS.16,17 & 18/1996 OF FOREST TRIBUNAL, KOZHIKODE DTD. 27/01/1998.

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APPELLANTS/RESPONDENTS IN THE O.As:
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1. **THE STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT OF KERALA, TRIVANDRUM -1.**

2. **THE CUSTODIAN OF VESTED FORESTS, ARANYA BHAVAN FOREST COMPLEX, OLAVAKKODE CIRCLE, PALGHAT-2.**

BY GOVERNMENT PLEADER SRI. M.P. PRAKASH.

RESPONDENTS/APPLICANTS IN THE O.As:
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1. **KURIAN, S/O. KURIEN, PLAPARAMBA, THOTTAKATTUKARA, VAKATHANAM VILLAGE, CHANGANACHERRY, KOTTAYAM.**

2. **SOMARAJAN, S/O. KUMARAN, PULKUNNEL, PAMPADI VILLAGE, THALAPALLY TALUK, THRISSUR DISTRICT.**

prv.

M.F.A. NO. 159/2000:

3. SUBRAMANIAN, S/O. KUMARAN,
-DO- -DO-.

BY ADV. SRI.D.KRISHNA PRASAD,
SRI.JOJI VARGHESE,
SRI.M.HARISHARMA,
SRI.D.NARENDRANATH.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 22/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

prv.

ORDER ON C.M.P. NO. 946/2000 IN M.F.A. NO. 159/2000

DISMISSED

SD/- J.B.KOSHY, JUDGE.

22/08/2007. **SD/- V.GIRI, JUDGE.**

prv.

J.B.KOSHY & V.GIRI, JJ.

M.F.A.No.159 OF 2000

Dated 22nd August, 2007

JUDGMENT

Koshy,J.

This appeal is filed against the common order passed by the Forest Tribunal in O.A.Nos.16, 17 & 18 of 1996. O.A.No.16 of 1996 relates to 71.75 cents of land, O.A.No.17 of 1996 relates to 2.38 acres, O.A.No.18 of 1996 relates to 1.90 acres in Pambadi village. In O.A.No.16 of 1996, the applicant relied on the title of the land by virtue of Ext.A11 settlement deed dated 24.9.1993 and applicants in O.A.Nos.17 and 18 of 1996 obtained title on the basis of Exts.A4 and A5 settlement deeds dated 23.11.1993. Prior title to the claimants in their case starts from Ext.A8 document dated 6.6.1968 and Ext.A1 partition deed dated 20.12.1969, much prior to the enforcement of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (in short `the Act'). According to the claimants, they were in possession and cultivating the property during the relevant date. When the forest officials objected cultivation contending that the land is a vested forest under Section 3(1) of the Act, they approached the Forest Tribunal for a declaration that it was not a private forest so as to vest in the Government. Section 3(1) of the Act reads as follows:

> "**3. Private forests vest in Government**:- (1) Notwithstanding anything contained in any other law for the time being in force, or in any contract or other document, but subject to the provisions of sub-sections (2) and (3), with effect on and from the appointed day, the ownership and possession of all private forests in the State of Kerala shall by virtue of this Act, stand transferred to and vested in the Government free from all encumbrances, and the right, title and interest of the owner or any other person in any private forest shall stand extinguished."

Therefore, for vesting in the Government, the land should be a private forest. Private forest is defined under Section 2(f)(2) of the Act as Section 2(f)(1) relates to land covered under the Madras Preservation of Private Forest Act (MPPF Act). Admittedly, this land is not covered under the MPPF Act. Considering the evidence it was found by the Tribunal that the land in question was not forest and it is not even a waste land or land enclaves within wooden areas. If it is not a private forest, forest officials have no jurisdiction to enter into the area or interfering with the possession or obstructing to the cultivation of the property and the land will not vested in the Government under Section 3(1) of the Act. Here, the Tribunal considered the matter in detail taking into account the prior deeds as well as commission reports and evidence adduced. In the partition deed itself the properties are mentioned as parambas and in Adangal

extracts (Village and revenue records) (Exts.A14 and A15), it is mentioned as `purayidams' and not as forests. None of the boundaries are forest or wooden areas. Tribunal has considered the matter in detail. At paragraph 15 of the order it is stated as follows:

> "15. Ext.A14 is the certified adangal extract in respect of the property comprised in Survey No.99. The property comprised in Survey No.99/3 is described as Purayiam. Ext.A15 is the adangal extract in respect of the property comprised in Survey No.29 where also the description of the property is shown as `purayidam'."

Tribunal also referred to the loan taken from the State Bank of Travancore for cultivation of the land (Ext.A7 letter) and Ext.A12 land revenue receipt. After the land was demarcated, notification was made. It is true that even without a notification, if the land is a private forest, it will vest in the Government. Notification only shows that the land was demarcated. Here, the land was not a forest and was a cultivated area even before the Act came into force and in any event, the land is not covered by any wooden area. Admittedly, no forest is also there in the area in question. In O.A.No.17/1996 and 18/1996 Commissioner could see about 800 rubber trees aged about 17 years apart from three jack trees. The area covered by O.A.No.16/1996 was a coconut plantation. The boundaries are also purayidams (not forest). As a finding of fact,

the Tribunal found that it was not a private forest vested under Section 3(1) of the Act and, therefore, allowed the application. Question of title etc. need to be considered by the Forest Tribunal only if the applicants are claiming exemption under Section 3(2) or 3(3) of the Act, even if land in question is a private forest as defined under the Act and vested under Section 3(1) of the Act. Forest officials have no jurisdiction to prevent cultivation if the land in question is not a private forest. Since the order of the Forest Tribunal is based on evidence, we see no ground to interfere with the same in an appeal proceedings.

The appeal is dismissed.

J.B.KOSHY
JUDGE

V.GIRI
JUDGE

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